

to the defendant to prove by parol that the user was the result of his leave and favor, and not of a claim of right in the other party. The fact that complainant has parted with his title to the land since the filing of the answer, cannot be brought forward by the defendant by a supplemental answer; the proper mode is to file a bill in the nature of a supplemental bill, which is in the nature of a plea, *puis darrien continuance*, at common law.

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[The bill in this case was filed to obtain an injunction restraining the defendant from closing a road over his lands, in which the complainant claimed a private right of way. The allegations of the bill and answer, and the substance of the evidence taken, are fully stated in the opinion of the Chancellor, delivered upon the hearing of the motion to dissolve. The defendant filed a supplemental answer, charging that since the filing of his original answer, the complainant had conveyed by deed all his right and title to the land mentioned in his bill, to a third party, whereby he had divested himself of all right to the privilege secured by the injunction. This answer, the Chancellor, for the reasons assigned in his opinion, ordered to be rejected and taken off the file.]

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THE CHANCELLOR:

The bill in this case claims a private right of way over the lands of the defendant, which must be founded either on grant, or by prescription, which supposes a grant. No actual grant has been shown, or is alleged in the bill, and therefore, if the complainant is entitled to a continuance of the injunction which issued to restrain the defendant from closing up the road, and from interfering with the complainant in the use of it, he must establish his title by prescription.

A user for twenty years exercised adversely and without any thing to qualify it, will afford sufficient ground for the presumption of a grant, but if the enjoyment can be referred to the leave or favor of the party over whose lands the right of way is claimed, or can be placed upon any other footing than a claim or assertion of right, it will repel the presumption of a grant. *Wright vs. Freeman*, 5 H. & J., 467; *Woolrych on Ways*, 19.

The bill, in this case, alleges that the complainant, and those